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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,952	07/11/2001	Peter Fladung	FLADUNG-1	9220
7590 07/27/2004				
COLLARD & ROE, P.C. 1077 Northern Boulevard Roslyn, NY 11576				
			EXAMINER PAYNE, SHARON E	
			ART UNIT 2875	PAPER NUMBER

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/902,952

Applicant(s)

FLADUNG, PETER

Examiner

Sharon E. Payne

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 13-24, 26-27, 29-30 is/are rejected.
- 7) ☒ Claim(s) 10, 12, 25 and 28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 0901.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "25" has been used to designate both a spacer and a bushing. See page 10. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 16 is objected to because of the following informalities: the word "window" should be before the word "breaking" in line 3. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Boivin (U.S. Patent 5,542,139).

Regarding claim 1, Boivin discloses a multi-purpose tool. The tool includes a window breaking implement (reference number 54) and a cutting implement (reference number 30).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 15-23 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Crowe (U.S. Patent 6,139,165).

Regarding claim 15, Crowe discloses a combination flashlight or nightstick/baton rescue punch assembly. The assembly includes a cap coupled to the battery compartment (Fig. 1), a window breaking implement slidably disposed in the cap (Fig. 2), and having one end extending into the battery compartment of the flashlight (see placement of power spring, Fig. 2), a spring urging the breaking implement against the batteries (reset spring, Fig. 2), and a striking pin formed at the other end of the window breaking implement for protrusion out of the cap (carbide tip, Fig. 2). The portions of the claim starting with "for contact" and ending with "batteries" and starting with "so that when said cap" and continuing to the end of the claim are considered to be functional language that is not given patentable weight. See M.P.E.P. 2114.

Concerning claim 16, Crowe discloses a breaking implement (Fig. 2), and a striking pin (portion from carbide tip to power spring, Fig. 2) formed at one end of the window breaking

implement (Fig. 2), said striking pin having its other end extending into the battery compartment of the flashlight (Fig. 2).

Regarding claim 17, Crowe discloses the device comprising a cap for coupling to the battery compartment of the flashlight (Fig. 1).

Concerning claim 18, Crowe discloses a thread for a screw-type attachment to the flashlight (Fig. 1).

Regarding claim 19, Crowe discloses the window breaking implement being arranged on a surface of the device which faces the surface provided for attachment to the flashlight (Fig. 1).

Concerning claim 20, Crowe discloses the window breaking implement comprising a point made of hard metal (carbide tip, Fig. 2).

Regarding claim 21, Crowe discloses the window breaking implement being centered on the outside of the device (Figs. 1 and 2).

Concerning claim 22, Crowe discloses the striking pin being centrally arranged (Fig. 2).

Regarding claim 23, Crowe discloses a stabilizer (portion including the hammer, reference number 54, on the lower end of the punch, Fig. 2) coupled to the striking pin (Fig. 2).

Regarding claim 30, Crowe discloses a cap coupled to the battery compartment (Fig. 1), a window breaking implement slidably disposed in the cap (Fig. 2), and having one end extending into the battery compartment of the flashlight (see placement of power spring, Fig. 2), a spring urging the breaking implement against the batteries (reset spring, Fig. 2), and a striking pin formed at the other end of the window breaking implement for protrusion out of the cap (carbide tip, Fig. 2). The portions of the claim starting with "for contact" and ending with "batteries" and starting with "so that when said cap" and continuing to the end of the claim are considered to be functional language that is not given patentable weight. See M.P.E.P. 2114.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-9 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crowe in view of McIntosh (U.S. Patent 5,313,376).

Regarding claim 1, Crowe discloses a window breaking implement (Fig. 1, right). Crowe does not disclose a cutting implement. McIntosh discloses a cutting implement (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the knife of McIntosh in the apparatus of Crowe to cut and see in a dark area at the same time.

Concerning claim 2, Crowe discloses a cap (Fig. 1). The portion of the claim starting with "for covering" and continuing to the end of the claim constitutes functional language that is not given patentable weight. See M.P.E.P. 2114.

Regarding claim 3, Crowe discloses a thread for screw-type attachment to the flashlight (Fig. 1).

Regarding claim 4, Crowe discloses the window breaking implement being arranged on a surface of the device which faces the surface provided for attachment to the flashlight (Fig. 1).

Concerning claim 5, Crowe discloses the window breaking implement comprising a point made of hard metal (carbide tip, Fig. 2).

Regarding claim 6, Crowe discloses the window breaking implement being centered on the outside of the cap (Figs. 1 and 2).

Concerning claim 7, Crowe discloses a window breaking implement (Fig. 2), comprising at one end a striking pin (portion from carbide tip to power spring, Fig. 2) centrally disposed in the device (Fig. 2), coupled to one end thereof (Fig. 2) and having its opposite end extending into the battery compartment of the flashlight (Fig. 2).

Regarding claim 8, Crowe discloses a stabilizer (portion including the hammer, reference number 54, on the lower end of the punch, Fig. 2) coupled to the striking pin (Fig. 2).

Concerning claim 9, Crowe does not disclose a cutting implement. McIntosh discloses a cutting implement disposed in the recess (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the cutting implement of McIntosh in the apparatus of Crowe to cut while using the flashlight. See Fig. 1 of McIntosh.

Regarding claim 24, Crow does not disclose a cutting implement. McIntosh discloses a cutting implement disposed in the recess of the device (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the cutting implement of McIntosh in the apparatus of Crowe to cut while using the flashlight. See Fig. 1 of McIntosh.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crowe in view of McIntosh as applied to claim 9 above, and further in view of Myerchin et al. (U.S. Patent 5,727,319).

Regarding claim 11, Crowe does not specifically disclose a recess that is narrower than the width of the finger. Myerchin et al. discloses a recess that is narrower than the width of a finger (Fig. 2). (The recess in which the blade sits must be narrower than the width of the finger,

because pocket knives themselves are narrower than the finger; the recess accommodates little more than the knife itself.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the recess of Myerchin et al. in the apparatus of Crowe to prevent a finger from entering the recess. See Fig. 1 of Myerchin.

10. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crowe in view of McIntosh as applied to claim 1 above, and further in view of Boivin (U.S. Patent 5,542,139).

Regarding claim 13, Crowe does not disclose a cutting implement. Boivin discloses a cutting implement comprising a blade directed outwardly (Fig. 1).

Using a second blade is considered to be an obvious duplication of parts. Since the blade is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a second blade that is directed outwardly to have a spare blade with which to cut.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the outwardly directed blade of Boivin in the apparatus of Crowe to cut a strip. See Fig. 1 of Boivin.

Concerning claim 14, Crowe does not disclose a mark. Using a shaped mark formed on the device which corresponds to the direction of the blades is considered to be an aesthetic design change. Since the mark is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a mark to indicate the direction of the blades in the Crowe reference. See M.P.E.P. 2144.04.

11. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crowe in view of Myerchin et al.

Regarding claim 26, Crowe does not specifically disclose a recess that is narrower than the width of the finger. Myerchin et al. discloses a recess that is narrower than the width of a finger (Fig. 2). (The recess in which the blade sits must be narrower than the width of the finger, because pocket knives themselves are narrower than the finger; the recess accommodates little more than the knife itself.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the recess of Myerchin et al. in the apparatus of Crowe to prevent a finger from entering the recess. See Fig. 1 of Myerchin.

12. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crowe in view of Boivin.

Crowe does not disclose a cutting implement. Boivin discloses a cutting implement comprising a blade directed outwardly (Fig. 1).

Using a second blade is considered to be an obvious duplication of parts. Since the blade is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a second blade that is directed outwardly to have a spare blade with which to cut.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the outwardly directed blade of Boivin in the apparatus of Crowe to cut a strip. See Fig. 1 of Boivin.

13. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crowe.

Concerning claim 29, Crowe does not disclose a mark. Using a shaped mark formed on the device which corresponds to the direction of the blades is considered to be an aesthetic design change. Since the mark is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a mark to indicate the direction of the blades in the Crowe reference. See M.P.E.P. 2144.04.

Allowable Subject Matter

14. Claims 10, 12, 25 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. The following is a statement of reasons for the indication of allowable subject matter. The prior art does not disclose a device for coupling to a flashlight having the following features:

- 1) a cutting implement disposed in the recess and spaced apart from the external dimensions of the device as recited in claims 10 and 25; and
- 2) a guide disposed in the recess as recited in claims 12 and 28.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

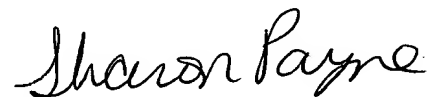
Outsen et al. (U.S. Patent 6,199,997) discloses a flashlight with a safety point.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon E. Payne whose telephone number is (571) 272-2379. The examiner can normally be reached on regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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